

Clearinghouse Rule 10-033

Report to
Legislative Council Rules Clearinghouse
NR 433, Wis. Adm. Code
Natural Resources Board Order No. AM-06-09

Wisconsin Statutory Authority

Sections 227.11(2)(a) and 285.11(1) and (6), Stats., interpreting Section 285.11(6), Stats.

Federal Authority

None

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

In January 2008, the Natural Resources Board adopted rules establishing ch. NR 433 Best Available Retrofit Technology (BART) requirements for the protection of visibility. Specifically, the BART requirements pertain to controlling particulate matter, nitrogen oxides and sulfur dioxide emitted from certain stationary sources which cause or contribute to impairment of visibility in mandatory class I federal areas. For Wisconsin, these areas are the Boundary Waters Canoe Area Wilderness and Voyageurs National Park in Minnesota, and the Seney National Wildlife Refuge and Isle Royal National Park in Michigan. The rule established procedures for identifying stationary sources potentially subject to BART and for determining appropriate control levels for each source based on several factors including visibility improvement.

Since the initial creation of BART requirements, the Department and affected stakeholders have identified several implementation issues and the need for certain rule clarifications. The revisions proposed by this rule package are in response to those issues.

Compliance Date for BART Controls:

The current BART rules require the owner or operator of a source which has been determined to be subject to BART controls to have those controls in place and operating "as expeditiously as practicable" but no later than December 31, 2013. The Department is proposing to extend the final allowed compliance date to December 31, 2015. This extended compliance date provides additional time for sources which are undergoing significant installations of control equipment, particularly in the case of a source implementing controls for multiple pollutants or emissions units. Extending the final compliance date to December 31, 2015 does not relax the requirement for controls to be in place as expeditiously as practicable.

Emissions Averaging

The Department is proposing clarifications to the emissions averaging provisions of the BART

rules. One change pertains to the extra 10% emission reduction required in order to qualify for the additional compliance flexibility afforded by emissions averaging under the current rule provisions. The proposed revision clarifies that the additional reduction applies only to the pollutant being offset by other reductions in the averaging plan.

Another proposed revision clarifies the intent that emissions averaging must account for all sources at a facility which can impact the real emission reductions achieved under BART requirements. Due to the nature of the regulation, BART may apply to one emissions unit at a facility but not to other similar emissions units. To avoid merely shifting emissions from one boiler to another, the BART rule currently requires all boilers at a facility to be included in any emissions averaging program. However, this language may unnecessarily include units which cannot be used to offset operational load or emissions of a BART affected boiler. For that reason, a revision is proposed to require only the boilers serving a similar function at the facility be included in emissions averaging because those boilers can affect the amount of actual emission reductions achieved by BART.

The Department also proposes to modify the emissions averaging program to allow an owner or operator of a BART affected source to submit a proposed emissions averaging plan at any time, not just during the initial BART determination process. Determining the best control approach for a source may require significant additional analysis once the BART control levels have been finalized. Therefore, the Department proposes to revise the BART rule to allow for future submittals of an emissions averaging plan. If submitted later, the emissions averaging plan must still show that the necessary emission reductions will be achieved by the compliance date set under the initial BART determination. This approach will also allow sources flexibility for submitting a revised averaging plan as operating conditions at the source change.

The existing BART rules in ch. NR 433 apply to large combustion sources, such as power plants and pulp and paper facilities, of a certain vintage which are determined to adversely impact visibility in mandatory federal class I areas. The proposed revisions are not anticipated to alter the sources currently subject to BART emission requirements.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Contacts

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Submitted on March 16, 2010

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 433.05(1)(a)4. and NR 433.06(1)(intro.), (b)1. and (c) relating to implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas.

AM-06-09

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: Section 285.11(6), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: Sections 227.11(2)(a) and 285.11(1) and (6), Stats.

3. Explanation of agency authority: Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., authorizes the Department to develop rules consistent with ch. 285, Stats. Section 285.11(6), Stats., authorizes the Department to develop and revise the State Implementation Plan for prevention, abatement and control of air pollution.

4. Related statute or rule: None.

5. Plain language analysis:

The proposed rule modifications pertain to ch. NR 433 which regulates Best Available Retrofit Technology (BART) for the protection of visibility in mandatory class I federal areas. These BART requirements pertain to controlling emissions of particulate (PM), nitrogen oxides (NO_x) and sulfur dioxide (SO₂) from certain stationary sources which cause or contribute to impairment of visibility.

The rules for Best Available Retrofit Technology currently require the owner or operator of a source, which has been determined to be subject to BART controls, to have those controls in place and operating "as expeditiously as practicable" but no later than December 31, 2013. The Department is proposing to extend the final allowed compliance date to December 31, 2015. The extended compliance date provides additional time for sources which are undergoing significant installations of control equipment, particularly in the case of a source implementing controls for multiple pollutants or emissions units. Extending the final compliance date to December 31, 2015 does not relax the requirement for controls to be in place as expeditiously as practicable.

The Department also proposes to clarify and to provide additional flexibility to the averaging provisions in the rule. The additional flexibility allows an owner or operator of a BART affected source to submit a proposed emissions averaging plan at any time, not just during the initial BART determination process.

6. Summary of, and comparison with, existing or proposed federal regulation:

The Board initially established ch. NR 433 in January 2008 to satisfy BART requirements set forth by the US Environmental Protection Agency (EPA) under the regional haze regulation published July 6, 2005 Federal Register (70 FR 39104). In that regulation the US EPA required all states to develop programs to assure reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I Federal Areas resulting from manmade air pollution. The application of Best Available Retrofit Technology (BART) on certain stationary sources is one of the core requirements for the implementation plan for regional haze.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

Illinois, Iowa, Michigan and Minnesota have adopted the same approach in meeting BART requirements

for industrial sources as Wisconsin. These states have identified BART eligible sources and are moving forward with the determination of applicable control requirements according to US EPA criteria.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:

The proposed rule modifications are the result of issues identified during the initial implementation of the BART rule requirements in Wisconsin. The Department found that facilities needed extra time to comply with BART requirements, particularly facilities that need multiple control equipment installations and those facilities facing multiple state and federal requirements for the same sources. Additionally, the Department found, during application of the trading requirements, certain provisions to be confusing or needing clarification.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:

No small business is subject to BART controls under the existing BART rules. Therefore the proposed rule modifications have no direct effect on small business.

10. Effect on small business:

There is no direct effect on small business.

11. Agency contact person:

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12. Place where comments are to be submitted and deadline for submission:

A public hearing has been scheduled for Monday, April 26, 2010. Comments on the proposed rule must be submitted on or before Friday, May 7, 2010. Written comments may be submitted at the public hearing, by regular mail, fax, E-mail, or through the Internet, and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

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Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://dnr.wi.gov/air/rules/calendar.htm> .

SECTION 1. NR 433.05(1)(a)4. is amended to read:

NR 433.05(1)(a)4. The requirement that the owner or operator of each source subject to BART shall install and operate BART as expeditiously as practicable, but in no event later than December 31, 2013 2015.

SECTION 2. NR 433.06(1)(intro.), (b)1., and (c) are amended to read:

NR 433.06(1)(intro.) The owner or operator of a facility, having at least one boiler subject to BART, may propose an emissions trading program if the program achieves an improvement in visibility in the mandatory class I federal areas greater than would be achieved through the installation and operation of BART on each boiler subject to BART. The owner or operator of a boiler subject to BART who is proposing to use an emissions trading program shall submit an emissions trading plan to the department ~~prior to the department's BART determination~~. The plan shall be subject to department approval and meet the following criteria:

(b)1. For each visibility impairing pollutant ~~subject to the~~ for which compliance is demonstrated through use of a trading plan, an emission reduction of that pollutant at least 10% greater than would be achieved through the installation and operation of BART on each boiler subject to BART.

(c) Trading shall be between all boilers serving a similar function and located on the same property.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)